REMARKS

In the Final Office Action[1] dated March 22, 2007, the Examiner: (1) rejected claims 1-6, 8-9, 14-41, 43-44, 49-76, 78-79, 84-105, and 112 under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,055,573 to Gardenswartz ("*Gardenswartz*") in view of U.S. Patent No. 5,970,469 to Scroggie ("*Scroggie*")2; (2) rejected claims 10-13, 45-48, and 80-83 under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Gardenswartz* in view of *Scroggie*, and further in view of U.S. Patent No. 5,960,409 to Wexler ("*Wexler*"); and (3) rejected claims 106-111 under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Gardenswartz* in view of *Scroggie* and further in view of U.S. Patent No. 5,945,653 to Walker ("*Walker*").

Claims 1-6, 8-41, 43-76, and 78-113 are currently pending. However, Applicant notes that claim 113 does not appear in the listing of pending claims cited by the Examiner. Similarly, this claim is not cited any of the rejections set forth in the Final Office Action. Accordingly, Applicant assumes that this claim is allowed in view of the cited art and respectfully requests confirmation by the Examiner in the next communication to Applicant.

No claims have been amended in this response. Applicant respectfully traverses the rejections under 35 U.S.C. § 103(a) and request the timely allowance of the pending claims.

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[1]The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

[2] The Examiner rejects claims 1-9, 14-44, 49-79, and 84-105 in the basis of the rejection, but addresses claims 1-6, 8-9, 14-41, 43-44, 49-76, 78-79, 84-105, and 112 in the body of the rejection. Accordingly, Applicant assumes that the Examiner intended to reject claims 1-6, 8-9, 14-41, 43-44, 49-76, 78-79, 84-105, and 112 in view of *Gardenswartz* and *Scroggie*.

I. Rejection under 35 U.S.C. § 103(a) based on *Gardenswartz* and *Scroggie*

The Examiner rejected claims 1-6, 8-9, 14-41, 43-44, 49-76, 78-79, 84-105, and 112 as being allegedly unpatentable under 35 U.S.C. § 103(a) over *Gardenswartz* in view of *Scroggie*. Applicant traverses the rejection because the Examiner has not established a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* M.P.E.P. § 2142, 8th Ed., Rev. 5 (August 2006). Moreover, "in formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed." USPTO Memorandum from Margaret A. Focarino, Deputy Commissioner for Patent Operations, May 3, 2007, page 2.

Independent claim 1 recites a method for providing a purchase transaction incentive, comprising, among other things:

> determining attributes of a first group of consumers in a market population of consumers who have purchased an item, wherein the market population of consumers is based on the stored transaction data and wherein at least one of the attributes includes at least one of:
>
> financial information associated with the first group of consumers including at least one of primary payment type, bad check indicator, or information relating to bad checks; or
>
> loyalty information associated with the first group of consumers including at least one of history of responses to loyalty offers, age, gender, or marital status.

With respect to claim 1, the Examiner asserts that *Gardenswartz* discloses the above-referenced limitations at col. 12, lines 29-56; col. 15, lines 20-40; and col. 4, lines 5-10 (Final Office Action at p. 4). Applicant disagrees with the Examiner's position.

In col. 15, lines 55-65, *Gardenswartz* discloses an "analytics unit" which "updates each consumer's progress toward fulfilling a value contract based on the purchase history of the consumer in the purchase history database 8." According to *Gardenswartz*, "progress may be determined by monitoring the purchases by a particular consumer." Furthermore, the "consumer may be identified by a frequent shopper or loyalty card, credit or debit card number, checking account number, or using any other identification." *Gardenswartz* further discloses that "each time a consumer whose identification can be determined makes a purchase, the items purchased along with the consumer's ID are stored in the purchase history database."

Gardenswartz, thus, teaches monitoring a consumer's purchase history, where the consumer may be identified by a frequent shopper or loyalty card, credit or debit card number, checking account number or using any other identification. However, *Gardenswartz* does not disclose the claimed step of "determining" attributes of a first group of consumers, wherein at least one of the attributes includes at least one of "financial information" or "loyalty information" associated with the first group of consumers, as defined in claim 1. The method disclosed by *Gardenswartz* does not determine such attributes with respect to a first group of consumers, but merely discloses using, for example, a credit or debit card number for identifying a consumer and storing that consumer's purchase history. Indeed, merely because *Gardenswartz* may identify a consumer by a card or account number, for example, does not

demonstrate that *Gardenswartz* teaches or suggests "determining attributes of a first group of consumers" or let alone, "financial information associated with the first group of consumers including at least one of: primary payment type, bad check indicator, or information relating to bad checks," as recited in independent claim 1. To this end, the rejection of claim 1 under 35 U.S.C. 103(a) is legally deficient and should be withdrawn.

Further, in rejecting claim 1, the Examiner relies on col. 4, lines 5-10 and col. 15, lines 20-40 of *Gardenswartz* for its teaching of "targeting promotional incentives to consumers based upon said consumers loyalty to particular brands" (Final Office Action at p. 4). Again, the Examiner's characterization of the cited art is misplaced.

For example, in the above cited portion, *Gardenswartz* discloses that "delivery of promotional incentives to certain consumers may be avoided" (emphasis added). These consumers "may include consumers who already comply with the behavior or consumers whose purchase histories demonstrate a reluctance to remain loyal to a particular brand" (col. 4, lines 5-10). For instance, at col. 15, lines 20-40, *Gardenswartz* discloses that the "analytics unit 16 searches the purchase history database 8 for consumers whose master records indicate that they are eligible for receiving a contract offer," where "[t]he eligibility of each consumer may depend on any desired factor(s) including the purpose of the contract, whether the consumer's observed offline purchase history meets certain criteria, and the consumer's response to previously delivered targeted advertisements including value contracts." *Gardenswartz*, therefore, merely discloses that promotional incentives (i.e. "value contract") may be based on the "behavior" of a consumer. There is no teaching or suggestion in *Gardenswartz* of "determining attributes of a first group of consumers" wherein at least one of the

attributes includes "financial information" (see above) or "loyalty information associated with the first group of consumers, including at least one of history of responses to loyalty offers, age, gender, or marital status," as recited in claim 1.

In view of the foregoing, Applicant respectfully submits that *Gardenswartz*'s alleged teaching of monitoring a consumer's purchase history or purchase behavior does not anticipate or render obvious the step of "determining attributes of a first group of consumers in a market population of consumers who have purchased an item . . . wherein at least one of the attributes includes at least one of financial information associated with the first group of consumers including at least one of: primary payment type or bad check indicator, or information relating to bad checks or loyalty information associated with the first group of consumers including at least one of history of responses to loyalty offers, age, gender, or martial status," as recited in independent claim 1. Moreover, *Scroggie* does not overcome the deficiencies of *Gardenswartz* with respect to these limitations. Nor does the Examiner rely on *Scroggie* to suggest such features. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 1. Therefore, the rejection of claim 1 under 35 U.S.C. § 103(a) should be withdrawn.

Independent claims 36, 71, and 112, although of different scope, recite features similar to those of claim 1. As explained, the cited art does not support the rejection of claim 1. Accordingly, the cited art does not support the rejection of claims 36, 71, and 112, for at least the same reasons set forth above in connection with claim 1.

Claims 2-6, 8-9, 14-35, 37-41, 43-44, 49-70, 72-76, 78-79, 84-105, and 113 depend from independent claims 1, 36, 71, or 112. As explained above, the cited art

fails to teach or suggest the recitations of claims 1, 36, 71, and 112. As such, the cited art also fails to support the rejection of these dependent claims for at least the same reasons set forth above. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by prior art. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claims 1-6, 8-9, 14-41, 43-44, 49-76, 78-79, 84-105, and 112 under 35 U.S.C. § 103(a) and allow the claims.

II. Other Rejections under 35 U.S.C. § 103(a)

Claims 10-13, 106-107, 109, and 111 ultimately depend from independent claim 1. Claims 45-48 and 108 ultimately depend from independent claim 36. Claims 80-83 and 110 ultimately depend from independent claim 71. As explained, neither *Gardenswartz* nor *Scroggie* support the rejection of independent claims 1, 36, and 71. Moreover, *Wexler* and *Walker* do not overcome the above-noted deficiencies of *Gardenswartz* or *Scroggie*. Accordingly, the cited art fails to support the rejection of claims 10-13, 45-48, 80-83, and 106-111 under 35 U.S.C. § 103(a) for at least the same reasons set forth above in connection with their respective independent claims. In addition, each of these dependent claims include recitations that are neither taught nor suggested by prior art. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claims 10-13, 45-48, 80-83, and 106-111 under 35 U.S.C. § 103(a) and allow the claims.

CONCLUSION

In view of the foregoing remarks, Applicant submits that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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